

Questions for the Record
U.S. House Ways and Means Committee, Subcommittee on Trade
Hearing on Trade and Labor: Creating and Enforcing Rules to Benefit American Workers
March 26, 2019

From Representative Jimmy Panetta to Celeste Drake

Negotiation Process

1. Ms. Drake, you recommend in your testimony that trade negotiations should be democratized. How have past negotiations failed in this regard, and what do Administrations need to do to provide adequate transparency and improve public trust in the negotiating process?

Trade negotiations have traditionally taken place behind closed doors, out of the view of the people and their elected representatives. This secrecy was originally justified as a way to give negotiators a freer hand to reduce tariffs in ways that powerful industries would not support. In the new era of neoliberal, corporate-driven trade, that excuse no longer makes sense. Trade “negotiations” no longer consist of haggling over tariff rates—and powerful industries support tariff reductions. Instead, behind closed doors, negotiators take the place of legislators and regulators, creating rules that tie Congress’s hands in areas as far reaching as health policy, financial services policy, foreign investor rights, food safety, and even anti-trust policy. Ambassador Lighthizer was accessible throughout the NAFTA process and engaged in high quality discussions and consultations with labor leaders in a way that prior administrations did not. However, the negotiations themselves, and the legal texts under discussion, continued to take place in secret, limiting public participation and oversight.

Rather than continue to keep trade texts secret until they are over and Congress is presented with a “done deal” to vote up or down, this and future administrations should:

- Ensure Congress approves trade agreement partners *before* negotiations begin;
- Create negotiating objectives that are specific to the trade partners involved and advance a trade model that provides balanced, inclusive benefits for all rather than a corporate-rights agenda;
- Ensure an effective legislative check on the executive branch so that it cannot unilaterally determine whether congressional trade objectives have been met after an agreement has been negotiated, or whether agreements should qualify for expedited consideration;
- Ensure Congress has effective opportunities to strip expedited consideration from trade deals that fail to meet Congressional objectives or fail to incorporate Congressional and public participation;
- Increase access to U.S. trade policy making, trade proposals, and negotiating texts for Congress, congressional staff, and the public; and

- **Be part of a larger trade and competitiveness package that addresses shortcomings in existing trade enforcement and remedies and provides complementary domestic economic policies that will help ensure that *all* can benefit from trade, not just a few.**
2. Congress approved Trade Promotion Authority to permit our trade representative to negotiate more freely. Ms. Drake, how can we better democratize the process while still providing our trade representative the necessary authority to make progress on new deals?

Trade policy is just one of many economic policies that affect jobs, wages, inequality, and labor rights. There is no reason that it should be privileged over other economic policies, particularly when, as now, “trade agreements” affect the price of our drugs, our privacy, the stability of our financial system, and our ability to change and update our regulatory regime. While it is clear that at some point, trade negotiations must end and the text must be fixed, it is undemocratic and counterproductive to lock citizens out during the negotiations and also to deny them the right to improve the agreement once the text has been made public. The AFL-CIO recommends that Congress and administration work together to reform trade negotiating authority to make it more democratic, transparent, and participatory, as outlined above. We believe the proper balance can be struck, and that trade policy will be improved, by adhering to these principals and abandoning a tradition of secrecy that can no longer be justified.

Enforcement

3. Ms. Drake, you also argue that there has not been the political will to enforce trade deals. You have recommended creating a “labor secretariat” and allowing aggrieved parties to play a role advancing their cases. How would a labor secretariat function within an international trade framework?

As one possible solution to overcome the problem of lack of political will to enforce labor rules in trade agreements, we propose creating a new multilateral independent labor secretariat. The secretariat would not be under the political control or direction of any NAFTA party. Rather, it would be staffed with experts in labor and human rights, tasked with providing technical assistance, monitoring and enforcement functions to ensure that all parties to the new NAFTA were in compliance with the deal’s labor obligations. The secretariat would be funded jointly by the parties and overseen by a working group made up of government officials, labor and employer representatives, academics, and other members of civil society. If the Executive Director provides good cause, the working group could remove him/her with agreement from representatives of all NAFTA parties and all working group sectors. A fulsome description of the Secretariat can be found in our 2017 document, “Making NAFTA Work for Working People,” available here: https://aflcio.org/sites/default/files/2017-06/NAFTA%20Negotiating%20Recommendations%20from%20AFL-CIO%20%28Witness%3DTLee%29%20Jun2017%20%28PDF%29_0.pdf.